



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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In re application of
Herbert Wegner et al
Serial No. 09/806,216
Filed: April 25, 2001
For: DEVICE FOR GENERATING AN AEROSOL:

:
: DECISION ON
: PETITION
: _____

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION UNDER MPEP 711.03(c) II, filed Feb. 25, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of January 31, 2003, for failure to timely file a proper response to the Office letter mailed July 17, 2002 be withdrawn. The petitioner asserts that the Office letter was not received by the applicants.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

The evidence presented is sufficient to establish that the above noted Office letter was not received by petitioner. The evidence provided includes a statement by the petitioner that the Office letter was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Office letter was not received. Also provided is a copy of the attorney's docket records for SN 09/806,216 where the Office letter dated July 17, 2002 would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt

remailing of the Office letter to the correspondence address and restarting of the statutory period of response from the remail date thereof.

The Petition is **GRANTED**.

Jacqueline Stone

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